

Introduced by Senator Alquist

December 6, 2004

An act to repeal and add Section 803 of the Penal Code, relating to criminal procedure, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 16, as amended, Alquist. ~~Criminal Procedure~~ *procedure*.

Existing law provides various statutes of limitation for various offenses. Existing law, operative until March 6, 2005, does not include certain provisions of law reviving expired ~~statutes~~ *statutes* of limitation for certain sex offenses that have been held to be unconstitutional and reorganizes certain other provisions relating to time limitations on filing criminal charges. Other provisions of law effective March 6, 2005, which contain those unconstitutional provisions, also provide that the applicable period of limitations does not begin to run on a violation of prohibitions against engaging in certain transactions involving monetary instruments connected to criminal activity until the offense has been, or reasonably could have been, discovered.

This bill would provide that the provisions of existing law described above ~~which~~ *that* delete unconstitutional provisions regarding the statute of limitation for specified sex offenses and reorganize other provisions remain in effect.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 803 of the Penal Code, as amended by
2 Chapter 368 of the Statutes of 2004, is repealed.

3 SEC. 2. Section 803 of the Penal Code, as amended by
4 Chapter 2 of the Statutes of 2003–04 Fourth Extraordinary
5 Session, is repealed.

6 SEC. 3. Section 803 is added to the Penal Code, to read:

7 803. (a) Except as provided in this section, a limitation of
8 time prescribed in this chapter is not tolled or extended for any
9 reason.

10 (b) No time during which prosecution of the same person for
11 the same conduct is pending in a court of this state is a part of a
12 limitation of time prescribed in this chapter.

13 (c) A limitation of time prescribed in this chapter does not
14 commence to run until the discovery of an offense described in
15 this subdivision. This subdivision applies to an offense
16 punishable by imprisonment in the state prison, a material
17 element of which is fraud or breach of a fiduciary obligation, the
18 commission of the crimes of theft or embezzlement upon an elder
19 or dependent adult, or the basis of which is misconduct in office
20 by a public officer, employee, or appointee, including, but not
21 limited to, the following offenses:

22 (1) Grand theft of any type, forgery, falsification of public
23 records, or acceptance of a bribe by a public official or a public
24 employee.

25 (2) A violation of Section 72, 118, 118a, 132, ~~or 134~~ 134, or
26 186.10.

27 (3) A violation of Section 25540, of any type, or Section
28 25541 of the Corporations Code.

29 (4) A violation of Section 1090 or 27443 of the Government
30 Code.

31 (5) Felony welfare fraud or Medi-Cal fraud in violation of
32 Section 11483 or 14107 of the Welfare and Institutions Code.

33 (6) Felony insurance fraud in violation of Section 548 or 550
34 of this code or former Section 1871.1, or Section 1871.4, of the
35 Insurance Code.

36 (7) A violation of Section 580, 581, 582, 583, or 584 of the
37 Business and Professions Code.

1 (8) A violation of Section 22430 of the Business and
2 Professions Code.

3 (9) A violation of Section 10690 of the Health and Safety
4 Code.

5 (10) A violation of Section 529a.

6 (11) A violation of subdivision (d) or (e) of Section 368.

7 (d) If the defendant is out of the state when or after the offense
8 is committed, the prosecution may be commenced as provided in
9 Section 804 within the limitations of time prescribed by this
10 chapter, and no time up to a maximum of three years during
11 which the defendant is not within the state shall be a part of those
12 limitations.

13 (e) A limitation of time prescribed in this chapter does not
14 commence to run until the offense has been discovered, or could
15 have reasonably been discovered, with regard to offenses under
16 Division 7 (commencing with Section 13000) of the Water Code,
17 under Chapter 6.5 (commencing with Section 25100) of, Chapter
18 6.7 (commencing with Section 25280) of, or Chapter 6.8
19 (commencing with Section 25300) of, Division 20 of, or Part 4
20 (commencing with Section 41500) of Division 26 of, the Health
21 and Safety Code, or under Section 386, or offenses under
22 Chapter 5 (commencing with Section 2000) of Division 2 of,
23 Chapter 9 (commencing with Section 4000) of Division 2 of,
24 Section 6126 of, Chapter 10 (commencing with Section 7301) of
25 Division 3 of, or Chapter 19.5 (commencing with Section 22440)
26 of Division 8 of, the Business and Professions Code.

27 (f) (1) Notwithstanding any other limitation of time described
28 in this chapter, a criminal complaint may be filed within one year
29 of the date of a report to a responsible adult or agency by a child
30 under 18 years of age that the child is a victim of a crime
31 described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

32 (2) For purposes of this subdivision, a “responsible adult” or
33 “agency” means a person or agency required to report pursuant to
34 Section 11166. This subdivision applies only if both of the
35 following occur:

36 (A) The limitation period specified in Section 800, 801, or
37 801.1, whichever is later, has expired.

38 (B) The defendant has committed at least one violation of
39 Section 261, 286, 288, 288a, 288.5, 289, or 289.5 against the

1 same victim within the limitation period specified for that crime
2 in Section 800, 801, or 801.1.

3 (g) (1) Notwithstanding any other limitation of time described
4 in this chapter, a criminal complaint may be filed within one year
5 of the date of a report to a California law enforcement agency by
6 a person of any age alleging that he or she, while under the age of
7 18 years, was the victim of a crime described in Section 261,
8 286, 288, 288a, 288.5, 289, or 289.5.

9 (2) This subdivision applies only if all of the following occur:

10 (A) The limitation period specified in Section 800, 801, or
11 801.1, whichever is later, has expired.

12 (B) The crime involved substantial sexual conduct, as
13 described in subdivision (b) of Section 1203.066, excluding
14 masturbation that is not mutual.

15 (C) There is independent evidence that corroborates the
16 victim's allegation. If the victim was 21 years of age or older at
17 the time of the report, the independent evidence shall clearly and
18 convincingly corroborate the victim's allegation.

19 (3) No evidence may be used to corroborate the victim's
20 allegation that otherwise would be inadmissible during trial.
21 Independent evidence does not include the opinions of mental
22 health professionals.

23 (h) (1) Notwithstanding any other limitation of time described
24 in this chapter, a criminal complaint may be filed within one year
25 of the date on which the identity of the suspect is conclusively
26 established by DNA testing, if both of the following conditions
27 are met:

28 (A) The crime is one that is described in subparagraph (A) of
29 paragraph (2) of subdivision (a) of Section 290.

30 (B) The offense was committed prior to January 1, 2001, and
31 biological evidence collected in connection with the offense is
32 analyzed for DNA type no later than January 1, 2004, or the
33 offense was committed on or after January 1, 2001, and
34 biological evidence collected in connection with the offense is
35 analyzed for DNA type no later than two years from the date of
36 the offense.

37 (2) For purposes of this section, "DNA" means
38 deoxyribonucleic acid.

39 (i) For any crime, the proof of which depends substantially
40 upon evidence that was seized under a warrant, but which is

1 unavailable to the prosecuting authority under the procedures
2 described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th
3 703, *People v. Superior Court (Bauman & Rose)* (1995) 37
4 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to
5 claims of evidentiary privilege or attorney work product, the
6 limitation of time prescribed in this chapter shall be tolled from
7 the time of the seizure until final disclosure of the evidence to the
8 prosecuting authority. Nothing in this section otherwise affects
9 the definition or applicability of any evidentiary privilege or
10 attorney work product.

11 (j) (1) In a criminal investigation involving child sexual abuse
12 as described in subdivision (f) or (g), when the limitations period
13 set forth therein has not expired, that period shall be tolled from
14 the time a party initiates litigation challenging a grand jury
15 subpoena until the end of that litigation, including any associated
16 writ or appellate proceeding, or until the final disclosure of
17 evidence to the investigating or prosecuting agency, if that
18 disclosure is ordered pursuant to the subpoena after the litigation.

19 (2) Nothing in this subdivision affects the definition or
20 applicability of any evidentiary privilege.

21 (3) This subdivision shall not apply where a court finds that
22 the grand jury subpoena was issued or caused to be issued in bad
23 faith.

24 (k) As used in subdivisions (f) and (g), Section 289.5 refers to
25 the statute enacted by Chapter 293 of the Statutes of 1991
26 relating to penetration by an unknown object.

27 SEC. 4. This act is an urgency statute necessary for the
28 immediate preservation of the public peace, health, or safety
29 within the meaning of Article IV of the Constitution and shall go
30 into immediate effect. The facts constituting the necessity are:

31 In order to prevent deletion of the changes to Section 803 of
32 the Penal Code enacted by Chapter 368 of the Statutes of 2004
33 by the enactment of Chapter 2 of the Statutes of the 2003–04
34 Fourth Extraordinary Session it is necessary that this bill take
35 effect immediately.